

COMMERCIAL IN CONFIDENCE

**[Insert supplier name]**

and

**Karbon Homes Limited**

**For the provision of  
[Insert contract name]**

**THIS AGREEMENT IS DATED:**

**IS BETWEEN THE PARTIES:**

1. **[insert supplier name]** (Company No. **[insert number]**) whose registered office is at, **[insert address]** (“**the Supplier**”); and
2. **Karbon Homes Limited** (Company No. RS007529) whose registered office is at Number Five, Gosforth Park Avenue, Gosforth Business Park, Newcastle Upon Tyne, NE12 8EG (“**the Client**”).

**BACKGROUND**

- A. The Supplier is engaged in the business of supplying the Goods. The Client issued an invitation to tender to prospective suppliers on **[insert date]**.
- B. On the basis of the Supplier's response to that invitation to tender, the Client selected the Supplier as its preferred supplier and the Client and the Supplier entered into negotiations regarding the provision of Goods.
- C. As a result of such negotiations the Client wishes to purchase, and the Supplier has agreed to supply, the Goods in accordance with this Agreement.

## CONTRACT PARTICULARS

<i>Clause etc</i>	<i>Subject</i>	
1.1.6	Commencement Date	[insert date] (or if amended during implementation to be agreed by both parties and confirmed in writing)
1.1.16	Extension Period	[insert date] to [insert date]  (or if commencement date is amended during implementation, extension period will also be amended accordingly)
1.1.9	Contract Review Date	[6 months] prior to end of Initial Term
1.1.2	Authorised Officer	Name: Address: Telephone: Email:
1.1.12	Dedicated Contract Manager	Name: Address: Telephone: Email:
1.1.15	Deputy Contract Manager	Name: Address: Telephone: Email:
1.1.33	Supplier's Site(s)	[Insert site area].
18.0.1	Employers Liability Insurance	£10 million
18.0.2	Public Liability Insurance	£5 million
18.0.3	Product Liability Insurance	£5 million
18.0.4	Professional Indemnity Insurance	£5 million

## AGREEMENT

## 1. DEFINITIONS AND INTERPRETATIONS:

1.1 In this form of Agreement, the following words and phrases shall have the meanings given to them as set out below:

**"Agreement"** means this written agreement between the Client and the Supplier consisting of these clauses and any attached Schedules;

**"Authorised Officer"** means the person detailed in the Contract Particulars or any other representative authorised to act on the Client's behalf;

**"Business Day"** means Monday to Friday excluding public and bank holidays in England and Wales;

**"Change of Control"** means a change in control of either Party as a result of the acquisition of either:

- a) the voting rights attaching to 25% or more of the voting shares in the affected Party; or
- b) the power to direct or cause the direction and management of the policies of the affected Party in accordance with the acquirer's wishes, whether as a result of the ownership of shares, control of the board of directors, contract or any powers conferred by the articles of association or other constitutional documents of the affected Party;

**"Client's Personnel"** means all employees, staff, other workers, agents and consultants of the Client from time to time;

**"Commencement Date"** means the date stated in the Contract Particulars;

**"Contract Documents"** shall include all tender documents, Supplier tender responses and any subsequent documents arising as a result of the procurement process in relation to the provision of the Goods (including the Supplier's IT implementation plan in accordance with Schedule 7 (IT Systems)) as set out in Schedule 3 (Contract Documents).

**"Contract Review"** means regular review of the Supplier's provision of the Goods by the Management Group to check that it is being performed in accordance with this Agreement;

**"Contract Review Date"** means the dates stated in the Contract Particulars;

**"Contract Year"** means the period from the Commencement Date until the day before the first anniversary of the Commencement Date and thereafter each successive 12 monthly period;

**"Core List"** means the list of materials contained within the Contract Documents, including 'van stock', 'stock' and 'non-stock' items, as may be varied by written agreement of the Parties from time to time;

**“Dedicated Contract Manager”** means the person detailed in the Contract Particulars or as notified to the Client by the Supplier from time to time, appointed by the Supplier to manage the delivery of the contract;

**“Default”** shall mean any failure, by either Party, to carry out their responsibilities under this Agreement;

**“Default Notice”** means a written notice setting out the details of any Default and, if the Default can be rectified, the action needed to rectify it, and the timescale within which it must be rectified;

**“Deputy Contract Manager”** means the person detailed within the Contract Particulars, or as notified to the Client by the Supplier from time to time, appointed by the Supplier to manage the delivery of the contract where the Contract Manager is unavailable;

**“Extension Period”** means the period stated in the Contract Particulars as agreed between the Parties;

**“Force Majeure”** means any cause affecting, preventing or hindering the performance by a Party of its obligations under this Agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Supplier, the Supplier's Staff or any other failure in the Supplier's supply chain;

**“Goods”** means any goods to be supplied by the Supplier (or by the Supplier's sub-contractors) under this Agreement as set out in Schedule 1 (Specification);

**“Initial Term”** means a period of 3 years from the Commencement Date;

**“Insolvency Event”** means in respect of either Party:

- a) other than for the purposes of a bona fide reconstruction or amalgamation, such Party passing a resolution for its winding up, or a court of competent jurisdiction making an order for it to be wound up or dissolved, or that party being otherwise dissolved; or
- b) the appointment of an administrator of, or the making of an administration order in relation to, that Party, or the appointment of a receiver or administrative receiver of, or an encumbrancer taking possession of or selling, the whole or any part of the entity's undertaking, assets, rights or revenue; or
- c) that Party entering into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them, or taking steps to obtain a moratorium, or making an application to a court of competent jurisdiction for protection from its creditors; or
- d) that Party being unable to pay its debts, or being capable of being deemed unable to pay its debts, within the meaning of section 123 of the Insolvency Act 1986; or

e) that Party entering into any arrangement, compromise or composition in satisfaction of its debts with its creditors;

**"Intellectual Property Rights"** means any and all intellectual property rights of any nature anywhere in the world whether registered, registrable or otherwise, including patents, utility models, trade marks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the look and feel of any websites;

**"Key Performance Indicators"** means the key performance indicators set out in Schedule 6, as may be varied by written agreement of the Parties;

**"Management Group"** means a group comprising one senior manager of each Party who shall review and monitor the performance of this Agreement, as detailed in Clause 8;

**"Non-Stock Materials"** means any materials which are not Stock List items and are not expected to be held in stock, but are used on a regular basis and, as such, are required to be supplied within the timescales specified in the Key Performance Indicators;

**"Opening Hours"** means 7.30am to 17.00pm on any Business Day;

**"Order"** means the order for the Goods sent by the Purchaser in accordance with Clause 3 (Order Process);

**"Out of Hours"** means any time outside of the Opening Hours;

**"Party"** means a party to this Agreement, and **"Parties"** shall mean all parties to this Agreement;

**"Prices"** means the prices (excluding VAT), payable to the Supplier by the Client under this Agreement, as set out in the Schedule 2 (Pricing Schedule), for the full and proper performance by the Supplier of its obligations under this Agreement, including insurance, storage, handling discounts and the like;

**"Special Items"** means materials or goods that the Client wishes the Supplier to supply that are not generally available without being specifically manufactured or ordered. The timeframe and cost for supply of such materials shall be agreed between the Parties prior to ordering;

**"Specification"** means the description provided outlining the type and standards of Goods that the Supplier will deliver under this Agreement, as details in the Invitation to Tender and attached to this Agreement in Schedule 1;

**“Stock List”** means the list of materials on the Core List contained within the Contract Documents and the Stock List to be supplied prior to Contract award that shall, as a minimum, be held at each of the Supplier's locations at all times, as may be varied by written agreement of the Parties from time to time;

**“Supplier's Site(s)”** means as set out in the Contract Particulars;

**“Termination Date”** means the date of expiry or early termination of this Agreement in accordance with Clause 17;

**“Van Stock Items”** means those materials that are kept on Client vehicles for use in delivering their services to tenants as identified within the Contract Documents that shall, as a minimum, be held at each of the Supplier's locations at all times, as may be varied by written agreement of the Parties from time to time;

**“VAT”** means value added tax in accordance with the provisions of the Value Added Tax Act 1994 and any subsequent amendments.

1.2 The interpretation and construction of this Agreement shall be subject to the following provisions:

1.2.1 Words denoting the singular shall include the plural and vice versa.

1.2.2 Words denoting the masculine gender shall include the feminine and the neuter.

1.2.3 Words denoting persons shall include corporations, natural persons, partnerships, firms and other incorporated bodies.

1.2.4 Any reference to statute, enactment, order, regulation, Act or other similar instrument, shall be construed as a reference to the statute, enactment, order, regulation, Act or instrument as amended by any subsequent enactment, modification or order.

1.2.5 Any reference to a clause or schedule shall mean a clause or schedule to this Agreement. The schedules form part of this Agreement.

1.3 In the event of any inconsistency between the Agreement, its Schedules and an Order, the order of priority for the purposes of construction is:

1.3.1 the Clauses in the main body of the Agreement;

1.3.2 all Schedules to the Agreement excluding Schedule 3 (Contract Documentation);

1.3.3 Schedule 3 (Contract Documentation) to this Agreement;

1.3.4 the Order.

## **2. TERM**

- 2.1 Subject to Clause 2, this Agreement will start on the Commencement Date and will continue to apply for the Initial Term, unless terminated earlier in accordance with the provisions in this Agreement which permit earlier termination.
- 2.2 Subject to Clause 2, this Agreement will start on the Commencement Date and will continue to apply for the Initial Term, unless terminated earlier in accordance with the provisions in this Agreement which permit earlier termination.
- 2.3 The Client may offer an Extension Period and shall serve written notice on the Supplier no later than four (4) months before the expiry of the Initial Term or the first Extension Period if the Agreement has already been extended of any intention to extend the term of this Agreement under this Clause.
- 2.4 The Supplier shall within 30 days of receiving the Client's offer to extend the term of this Agreement, serve written notice on the Client indicating whether they wish to accept the extension to the term of the Agreement.
- 2.5 If the Supplier does not accept the Client's offer pursuant to Clause 2 this Agreement will terminate on the expiry of the Initial Term or the first Extension Period as applicable.
- 2.6 If the Supplier does accept the Client's offer pursuant to Clause 2 this Agreement shall continue on these terms.

## **3. ORDER PROCESS**

- 3.1 Each Order constitutes a separate offer by the Client to purchase the Goods subject to the terms of this Agreement, which the Supplier shall be free to accept or decline at its absolute discretion.
- 3.2 Each Order shall be agreed in the following manner:
- 3.3 the Supplier shall provide a fully integrated IT system as described in Schedule 7 (IT Systems) which allows the Client's Personnel to view an online catalogue showing the Goods available to order;
- 3.4 if the Client wishes to purchase any Goods it shall, in the case of Special Items, issue an Order in writing (via the interface, by email or any other method agreed between the Parties) to the Supplier, and where the Client wishes to purchase any Goods other than Special Items, the Client shall issue an Order to the Supplier via the online catalogue, in both cases specifying the details of the Goods required including:
  - 3.4.1 the type and quantity of Goods; and
  - 3.4.2 the delivery address if relevant.
  - 3.4.3 the Supplier shall within four Opening Hours:



- 3.5 acknowledge the Order and confirm in writing via the interface or by email that the Order has been accepted; or
- 3.6 notify the Client in writing via the interface or by email if the Order is not accepted and provide the Client with an explanation for the rejection of the Order.
- 3.7 The Client is not obliged to place any Orders under the Agreement and accordingly there are no minimum purchase obligations.
- 3.8 The Supplier acknowledges that it is not being appointed as an exclusive supplier of any of the Goods and the Client may at any time procure the Goods from a third party at its sole discretion.
- 3.9 The Client may from time to time change any details specified in its Order by written instructions.

#### **4. DELIVERY**

- 4.1 The Goods shall either be made available for collection by the Client from the Supplier's Site(s) or the Supplier shall deliver the Goods to the address specified by the Client in the Order. The Supplier shall endeavour to deliver the Goods within the timescales agreed at the point of Order.
- 4.2 Time is of the essence but if (before the Goods are despatched) the Client requests delivery or performance be delayed, the Supplier must agree to such request at no extra cost to the Client and the provisions of this Clause 4 will apply to any such revised date for delivery or performance.
- 4.3 A delivery note stating the relevant order or job number must accompany each consignment of Goods and must be displayed prominently.
- 4.4 Delivery by instalments will not be accepted by the Client unless previously agreed in writing.
- 4.5 Without prejudice to any other rights or remedies of the Client if, within twelve (12) months of delivery of any Goods or, if longer, within any period specified in the Order, it is discovered that the Goods supplied do not comply with the requirements of this Agreement or as otherwise notified to the Supplier in writing, then the Client shall have the right at its discretion to require the Supplier, free of charge and within a reasonable period (as agreed between the parties), to either remedy any defect in the Goods or to supply replacement Goods which comply with the requirements of this Agreement.

#### **5. RISK AND OWNERSHIP**

- 5.1 Ownership of the Goods as well as risk of damage to or loss of the Goods shall pass from the Supplier to the Client upon satisfactory delivery having been made by the Supplier or satisfactory collection having been made by the Client.

## **6. THE CLIENT'S OBLIGATIONS**

### **6.1 For the term of this Agreement:**

- 6.1.1 the Client shall purchase the Goods, at its absolute discretion, from the Supplier in accordance with this Agreement;
- 6.1.2 the Client shall pay the Supplier any sums due in accordance with the Schedule 2 (Pricing Schedule) and with the payment provisions set out in the Contract Documents;
- 6.1.3 the Client shall procure that the Client's Personnel will use all reasonable endeavours to act in a safe and appropriate manner when visiting the Supplier's Site(s). The Client shall be responsible for any acts or omissions of such visiting Client's Personnel and shall indemnify the Supplier against all costs, claims and liabilities in respect of loss or damage caused by such Personnel, save for any loss or damage caused by the Supplier's negligence.

## **7. SUPPLIER'S OBLIGATIONS**

### **7.1 For the term of this Agreement:**

- 7.1.1 the Supplier shall perform its obligations to the Client in accordance with this Agreement;
- 7.1.2 the Supplier warrants to the Client that the Goods:
  - (a) will be of satisfactory quality within the meaning of the Sale of Goods Act 1979 and fit for any purpose held out by the Supplier or made known to the Supplier at the time the Order is placed;
  - (b) will be free from defects in design, material and workmanship;
  - (c) will correspond with any relevant description or sample;
  - (d) will not infringe any Intellectual Property Rights of any person;
  - (e) will comply with all statutory requirements, regulations, by-laws and EU directives and regulations relating to the Supplier's performance of its obligations under this Agreement and the Goods, including their manufacture, sale, packaging, labelling, use, installation and maintenance (including the appropriate British Standard or equivalent specification unless otherwise agreed by the Client); and
  - (f) will comply with the general requirements of safety in terms of risk presented to the health and safety of persons.
- 7.1.3 the Supplier shall co-operate with the Client in the ongoing review of the content of the Core List, Stock List and other lists as and when requested by the Client in writing, and brief the Client on product

developments within the market place so as to obtain potential benefits of improved materials specification and economy;

- 7.1.4 the Supplier shall comply with its obligations set out in Schedule 7 (IT Systems).

## **8. PAYMENTS**

- 8.1 Payments from the Client to the Supplier shall be in accordance with the prices as set out in Schedule 2 (Pricing Schedule) or as otherwise agreed, in writing, between the Parties, and in accordance with the relevant fluctuation adjustments, as outlined in Clause 9 of this Agreement. The Prices are exclusive of VAT and inclusive of delivery costs (if applicable), which shall be due at the rate prevailing on the date of the Supplier's invoice.
- 8.2 Payments shall be due thirty (30) days from the receipt of Supplier invoices for any amounts that are undisputed. Electronic invoices shall be submitted on a weekly basis, by 12pm on a Monday for all of the transactions relating to the previous week. If an invoice is disputed, the Supplier must submit a revised invoice for the undisputed amounts or a credit note for the disputed item(s) to enable the balance of the invoice to be paid.
- 8.3 The Client shall, at any time, within sixty (60) days from the receipt of the Supplier invoice, request further information, in writing, from the Supplier in respect of individual payments that the Client considers to be incorrect. If no application is made by the Client within thirty (30) days from receipt of the Supplier invoice, all payments shall be due in accordance with Clause 8 of this Agreement. Where the Client does make an application, the Supplier will provide the requested information, in writing, to the Client, within fourteen (14) days of request. Once agreement is reached, the Client shall make payment, in accordance with Clause 8 of this Agreement, when the agreed sums are invoiced by the Supplier. If payment has already been made in full, the Supplier shall supply the Client with a credit note for the value of any overpayment.
- 8.4 The Client shall, at any time, request access to invoices for non-Core List and Special Items to enable an audit to be carried out on the mark-up applied.
- 8.5 All invoices shall be clearly marked with the Client's purchase order or job number, property address and sufficient detail of the Goods provided. Failure to do so may result in the Client requesting information as Clause 8 of this Agreement.
- 8.6 This Clause 8 shall apply to all credit notes raised by either Party.
- 8.7 Except for reasons beyond the Client's control, in the event of the Client failing to make payment within the timescales set out within this Clause 8, the Client shall, upon written request by the Supplier, pay interest to the Supplier on any amount outstanding at the rate of 2.5% per annum over the official rate of the Bank of England from time to time, payable by the Client for the period until payment is made.

8.8 If the Supplier owes the Client money under this Agreement (including and any sum which the Supplier is liable to pay to the Client in respect of any breach of the Agreement), and the sum is not paid within thirty (30) days, then the Client may unilaterally deduct or set off any such sum against any money due, or which may come due, to the Supplier under this Agreement or under any other agreement or contract with the Client. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Client in order to justify withholding payment of any such amount in whole or in part.

## **9. PRICE FLUCTUATIONS**

9.1 On the anniversary of each Contract Year, the Prices within Schedule 2 (Pricing Schedule), and all other previously agreed Prices, shall be revised using the published Retail Price Index (All Items) percentage fluctuations (available at <https://www.ons.gov.uk/economy/inflationandpriceindices>). A base date of July 2018 shall be used to determine the value of fluctuation increase/decrease, incorporating any further adjustment identified by the Supplier in the Contract Documents.

9.2 At no stage during the term of this Agreement, or following expiry, will any further fluctuation changes or variations to the agreed Prices be considered, other than outlined in Clause 9.

## **10. AUTHORISED OFFICER**

10.1 The Client shall appoint the Authorised Officer as a principal contact in respect of its rights and powers under this Agreement. This will not limit in any way any other of the Client's rights or obligations.

10.2 Details of the person the Client has appointed to act as Authorised Officer from the Commencement Date (their telephone number, email address and postal address) are set out in the Contract Particulars.

10.3 Should the person nominated as the Authorised Officer, or any of their contact details, change the Client shall notify the Supplier in writing of such changes.

10.4 All notifications of changes under Clause 9 will be made in accordance with Clause 13 (Notices).

## **11. MANAGEMENT GROUP/DEDICATED CONTRACT MANAGER**

11.1 Prior to the Commencement Date of this Agreement, the Parties shall appoint, in writing, one representative each who will constitute a Management Group that will monitor and review the implementation of this Agreement.

11.2 The Management Group membership shall include representatives from the Client and Supplier who have the authority to enforce the rights and powers under this Agreement on behalf of their individual Party.

11.3 Any changes to the Management Group membership shall be notified to the other Party, in writing at least five (5) Business Days prior to the Management

Group scheduled meeting. Any proposed changes shall be of a person of equal responsibilities as the individual they are to replace.

- 11.4 The Management Group shall meet on a monthly basis to discuss the performance of the Supplier, including KPI's, discuss and address any concerns, including Default Notices and act in a spirit of good faith, partnership and continual improvement.
- 11.5 The Supplier shall appoint a Dedicated Contract Manager to be the single point of contact for the Client, who will be the responsible person for overseeing this Agreement in its entirety, including management of individual branches, outlets, sub-contractors and any other organisations or individuals the Supplier may engage in order to carry out the Supplier's obligations under this Agreement.
- 11.6 Details of the person the Supplier has appointed to act as Dedicated Contract Manager from the Commencement Date (their telephone number, email address and postal address) are set out in the Contract Particulars, together with details of the Deputy Contract Manager who shall be available to be contacted by the Client whilst the Dedicated Contract Manager is absent due to holidays, sickness and the like.
- 11.7 Should the person nominated as the Dedicated Contract Manager or Deputy Contract Manager, or any of their contact details, change the Supplier shall notify the Client in writing of such changes.
- 11.8 The Dedicated Contract Manager may also act as the Supplier's nominated representative on the Management Group.

## **12. REVIEW, MONITORING AND INFORMATION**

- 12.1 The Management Group will meet at least once a month to review:
  - 12.1.1 the performance of the Supplier Obligations under this Agreement;
  - 12.1.2 monthly reports on Key Performance Indicators (KPI's) as identified in Schedule 6 of this Agreement;
  - 12.1.3 effectiveness of this Agreement and identify any improvements or efficiencies can be made to the supply of Goods by the Supplier.

The Management Group will meet to review, monitor and report on the suite of KPI's and make observations and recommendations to the Client as to progress against agreed targets in accordance with Schedule 6 of this Agreement. The Management Group shall also consider trends, issues and compliance to be established and necessary actions identified.

- 12.2 The Management Group shall also discuss any Default Notices, health and safety issues, review branch and van stock levels, materials, alternatives, efficiencies and over-all service improvements.

12.3 Minutes, reports and KPI documentation shall be provided by the Supplier, in an agreed format, within seven (7) Business Days of the date of the meeting.

12.4 A Contract Review will be carried out on or after the Contract Review Date.

### **13. NOTICES**

13.1 Any notice or other communication under this Agreement must be in writing and can only be sent by:

13.1.1 pre-paid 1st class post; or

13.1.2 recorded delivery post; or

13.1.3 personal delivery; or

13.1.4 email.

13.2 For the purposes of sending any notices, the Client's contact details are set out in the Contract Particulars. All notices and communications must be sent to the Authorised Officer details in the Contract Particulars.

13.3 For the purposes of sending any notices, the Supplier's contact details are set out in the Contract Particulars. All notice and communications must be sent to the Dedicated Contract Manager.

13.4 If either Party's address changes, it must notify the other Party in writing in accordance with this Clause 13.

13.5 All notices and communications shall be deemed to have been served:

13.5.1 if posted, two (2) Business Days after the date when posted;

13.5.2 if personally delivered, on the date of delivery; or

13.5.3 if by email, at the time of transmission.

13.6 Subject to Clause 13, if by applying its provisions a notice is deemed to have been served on a day which is not a Business Day or it is not received between the hours of 9am to 5pm on a Business Day then it shall be deemed to have been served on the next immediately following Business Day.

### **14. DEFAULT AND DEFAULT NOTICES**

14.1 Where either Party is in Default of the requirements of this Agreement (the "Defaulting Party"), without prejudice to any other rights or remedies Parties may have under this Agreement, the affected Party shall be entitled to issue a written Default Notice giving full details of the Default and the action and timeframe required to rectify the Default.

14.2 If the Default is not rectified within the specified timeframes by the Defaulting Party, the affected Party can apply to the Management Group to have the matter referred to Director level to either –

14.2.1 seek reasonable costs incurred as a result of the default from the Defaulting Party. This may include employing a third party to undertake part or all of the Supplier's obligations under this Agreement; and/or

14.2.2 terminate the Agreement in accordance with Clause 17 of this Agreement.

14.3 Nothing within this Clause 14 shall affect any of either parties' rights either under this Agreement or by law.

14.4 Where the Default Notice is complied with, the Defaulting Party shall be responsible for all costs incurred.

## **15. LIQUIDATED DAMAGES/RECHARGES**

15.1 The Client reserves the right to recover from the Supplier appropriate charges, compensations and costs that the Client may reasonably incur as a result of any breach, default or failure of the Supplier to comply with the terms and conditions of this Agreement, including but not limited to:

15.1.1 Recovery of any non-productive operative costs incurred by the Client resulting from a continued failure of the Supplier to supply materials from the Stock List, to a maximum of four hours. These costs are currently £32.00 per hour per operative (excluding VAT) and will fluctuate in accordance with Clause 9 of this Agreement. For the purpose of this Clause 15 "continued failure" shall mean failure to supply materials from the Stock List on two or more consecutive occasions; and/or

15.1.2 Recovery of any reasonable costs incurred by the Client resulting from a continued failure of the Supplier to supply core materials including, but not limited to, the procurement of a third party to provide the Goods, administration costs, reasonable cost associated with delivery or collection of materials, goods or services; and/or

15.1.3 Any compensation, costs, damages or financial settlement that may become due to tenants, service users or any other organisation or individual as a result of any breach, default or failure of the Supplier.

## **16. DISPUTE RESOLUTION**

16.1 If any dispute arises in connection with this Agreement, the Parties shall refer the dispute, together with supporting documentation as necessary, to the Management Group for resolution, negotiating on the basis of good faith, within fourteen (14) days of the dispute arising.

- 16.2 If within thirty (30) days of the date of the dispute arising referred to in Clause 16, the Management Group fail to reach a resolution of any dispute, the dispute shall be passed to meeting of a director of each Party to resolve.
- 16.3 In the event that the Parties' directors are unable to resolve the dispute, either Party may commence or continue court proceedings in respect of such unresolved dispute or issue.

## **17. TERMINATION**

- 17.1 Either Party may terminate this Agreement or part of this Agreement immediately by giving the other Party written notice, if:
- 17.1.1 the other Party is in material Default of this Agreement and such Default is irremediable or is not remedied in accordance with Clause 14 (Default and Default Notices); or
  - 17.1.2 persistently or repeatedly commits a breach of any of the terms or conditions of this Agreement, including consistent failure to achieve agreed KPI's, and fails to take action to remedy the same to the reasonable satisfaction of the non-breaching Party within the specified timeframes identified on the Default Notice from that Party; or
  - 17.1.3 an Insolvency Event occurs affecting either Party; or
  - 17.1.4 there is a Change of Control of either Party which the other Party has not agreed to in advance of the Change of Control occurring in writing.
- 17.2 Either Party may also terminate this Agreement at any time by giving a minimum of eight (8) months written notice to the other Party of its intention to do so.
- 17.3 Each written notice referred to in this clause shall be delivered in accordance with Clause 13 (Notices) of this Agreement.
- 17.4 On termination of this Agreement the following clauses shall survive and continue in full force and effect: Clause 18 (Insurance), Clause 19 (Indemnity), Clause 23 (Confidentiality), Clause 16 (Dispute Resolution), Clause 22 (TUPE) and Clause 37 (Governing Law and Jurisdiction).
- 17.5 Termination of this Agreement shall not affect any rights, remedies, obligations or liabilities of either Party that may have accrued up to the date of termination, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination.

## **18. INSURANCE**

- 18.1 The Supplier shall maintain the following levels of insurance in respect of its obligations under the Agreement:



- 18.1.1 Employer Liability Insurance to the sum of £10 million (ten million pounds) in respect of one incident and the number of incidents covered shall be unlimited; and
  - 18.1.2 Public Liability Insurance to the sum of £5 million (five million pounds) in respect of one incident and the number of incidents covered shall be unlimited; and
  - 18.1.3 Product Liability Insurance to the sum of £5 million (ten million pounds) in respect of one incident and the number of incidents covered shall be unlimited; and
  - 18.1.4 Professional Indemnity Insurance to the sum of £5 million (five million pounds) in respect of one incident and the number of incidents covered shall be unlimited.
- 18.2 The Supplier shall provide evidence to the Client that the insurances, above, are properly maintained, including evidence of annual insurance renewals.

## **19. INDEMNITIES**

- 19.1 The Supplier shall indemnify the Client against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Client arising out of or in connection with:
- 19.1.1 any claim made against the Client for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the supply or use of the Goods;
  - 19.1.2 any claim made against the Client by a third party arising out of, or in connection with, the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Agreement by the Supplier, its employees, agents or subcontractors; and
  - 19.1.3 any claim made against the Client by a third party for death, personal injury or damage to property arising out of, or in connection with, defective Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors.
- 19.2 If any third party makes a claim, or notifies an intention to make a claim, against the Client which may reasonably be considered likely to give rise to a liability under this indemnity (Claim), the Client shall:
- 19.2.1 as soon as reasonably practicable, give written notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable detail;
  - 19.2.2 not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Supplier (such

consent not to be unreasonably conditioned, withheld or delayed), provided that the Client may settle the Claim (after giving prior written notice of the terms of settlement (to the extent legally possible) to Supplier, but without obtaining Suppliers consent) if Client reasonably believes that failure to settle the Claim would be prejudicial to it in any material respect;

19.2.3 give the Supplier and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Client , so as to enable the Supplier and its professional advisers to examine them and to take copies (at the Supplier's expense) for the purpose of assessing the Claim; and

19.2.4 subject to Supplier providing security to the Client to the Client's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, take such action as the Supplier may reasonably request to avoid, dispute, compromise or defend the Claim.

19.3 If a payment due from the Supplier under this clause is subject to tax (whether by way of direct assessment or withholding at its source), the Client shall be entitled to receive from the Supplier such amounts as shall ensure that the net receipt, after tax, to the Client in respect of the payment is the same as it would have been were the payment not subject to tax.

19.4 Nothing in this clause shall restrict or limit the Client's general obligation at law to mitigate a loss which it may suffer or incur as a result of a matter that may give rise to a claim under this indemnity.

## **20. HEALTH AND SAFETY**

20.1 The Supplier shall ensure that its employees, agents and sub-contractors shall, at all times, in connection with this Agreement comply with the Health and Safety at Work etc. Act 1974, and any other health and safety law, regulations, codes of practice or guidance in force from time to time. Failure to do so shall be considered a material breach in accordance with Clause 17 (Termination).

20.2 The Supplier shall provide the Client with copies of its health and safety policies and procedures before the Commencement Date and notify the Client of any changes to those policies and procedures from time to time.

20.3 Any accident or incident occurring as a result of anything done by the Supplier pertaining to this Agreement shall be reported immediately, in writing, to the Client.

## **21. KEY PERFORMANCE INDICATORS (KPI'S)**

- 21.1 The performance of this Agreement shall be monitored using an agreed suite of Key Performance Indicators (KPI's) which will form an integral part of the management and reporting requirements in respect of this Agreement.
- 21.2 The Supplier shall ensure that the Management Group shall receive regular, timely, accurate and auditable data from the Supplier to enable trends, issues and compliance to be established and necessary actions identified.
- 21.3 Consistent failure to achieve the agreed levels of KPI performance shall, for the purposes of this Agreement, be considered as failing to meet any individual KPI target in three consecutive monthly periods or failing to meet **50% of all KPI targets** in three consecutive monthly periods. Consistent failure of KPI's shall be dealt with in accordance with Clause 17 of this Agreement.
- 21.4 The final KPI measures and targets shall be agreed with the Supplier, however as a minimum the Client requires the KPI in Schedule 6 to be monitored on a monthly basis during the term of this Agreement.

## **22. TUPE**

- 22.1 The Client gives no warranty as to whether the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) may apply to the commencement of the Contract, or to the commencement of the provision of Goods by the Supplier or by a successor supplier, or to the cessation of the provision of Goods by the Supplier or by a predecessor supplier, but the parties acknowledge that clause 3(3)(b) of TUPE makes it unlikely that TUPE would be deemed to cover activities under this Agreement, as the purpose of the Agreement is wholly or mainly for the supply of Goods for the Client's use.
- 22.2 The Client accepts no liability in relation to any TUPE-related matters arising out of the operation of this Agreement, whether in respect of any staff transferring or alleging transfer to the Supplier, or from the Supplier, or otherwise. The Supplier shall indemnify the Client in full for and against all claims, costs expenses or liabilities whatsoever and howsoever arising, including without limitation all legal expenses and other professional fees (together with any VAT thereon) in relation to any such TUPE-related claims or allegations arising.

## **23. CONFIDENTIALITY**

- 23.1 Each Party shall treat all dealings in respect of this Agreement as private and confidential. Neither Party shall use, publish or disclose any confidential information disclosed by the other Party except for the purpose of the Agreement, to any third parties without the express written permission of the other Party. Both Parties will ensure that all confidential information is restricted to those employees or agents of the Parties who require access to this information for their performance of their duties in relation to this Agreement. Failure to comply with the terms of this Clause may be a justifiable ground for termination of the Agreement under Clause 17.

- 23.2 Nothing in this Agreement will prevent either Party from making any disclosure of the Confidential Information required by law or by any competent authority.
- 23.3 Either Party will, on request from the other Party, return all copies and records of the Confidential Information disclosed by the other Party and will not retain any copies or records of the Confidential Information disclosed by the other Party.
- 23.4 Neither this Agreement nor the supply of any information grants either Party any licence, interest or right in respect of any intellectual property rights of the other Party except the right to copy the Confidential Information disclosed by the other Party solely for the undertaking of this Agreement.
- 23.5 The undertakings in this Clause will continue in force for a period of five (5) years after expiry or termination of this Agreement.

## **24. INTELLECTUAL PROPERTY RIGHTS**

- 24.1 Neither Party shall use any Intellectual Property Rights belonging to the other Party except in accordance with the provisions of this Agreement or any directions given by such other Party.
- 24.2 Neither Party shall acquire any ownership, title or rights in any Intellectual Property Rights of the other Party (whether registered or unregistered) by virtue of this Agreement.

## **25. THIRD PARTY RIGHTS**

- 25.1 Notwithstanding any other provision of this Agreement, nothing in this Agreement confers or is intended to confer any right to enforce any of its terms on any person who is not a party to it.

## **26. ASSIGNMENT/SUB-CONTRACTING**

- 26.1 Neither Party may assign or otherwise transfer, dispose of or part with, any of its rights or obligations under this Agreement to any third party without the prior written consent of the other Party not to be unreasonably withheld.
- 26.2 The Supplier shall not sub-contract its obligations or responsibilities under this Agreement without the previous written consent of the Client, not to be unreasonably withheld. Such consent shall not relieve the Supplier from any liability or obligation under this Agreement and the Supplier shall remain responsible for the acts, defaults and neglects of any transferee or sub-contractor, its servants or agents, as though they were the acts, defaults and neglects of the Supplier itself.

## **27. LIABILITY**

- 27.1 Without prejudice to Clause 27, neither Party shall be liable to the other for any loss of profits, loss of revenue, loss of business or contracts, loss or corruption of data or information (whether direct or indirect) or any indirect,

special, consequential, economic losses or other indirect financial losses whether arising under or in connection with this Agreement.

- 27.2 Without prejudice to Clause 27, the Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or for any reason whatsoever or howsoever arising in connection with the performance or expected performance of this Agreement shall be limited to £600,000 in any financial year of this Agreement.
- 27.3 Nothing in this Agreement shall exclude or limit or purport to exclude or limit either Parties liability for:
- 27.3.1 death or personal injury caused by its negligence
  - 27.3.2 fraud or for fraudulent misrepresentation;
  - 27.3.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
  - 27.3.4 breach of section 2 of the Consumer Protection Act 1987; or
  - 27.3.5 the indemnities contained in Clause 19; or
  - 27.3.6 the deliberate default or wilful misconduct of that Party, its employees, agents or subcontractors.

## **28. CONFLICTS OF INTEREST**

- 28.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any of its staff are placed in a position where, in the reasonable opinion of the Client, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Client under the provisions of the Agreement. The Supplier will disclose to the Client full particulars of any such conflict of interest which may arise.
- 28.2 The Client reserves the right to terminate the Agreement immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Client, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Client under the provisions of the Agreement. The actions of the Client pursuant to this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Client.

## **29. EQUALITIES**

- 29.1 The Supplier as an employer and provider of the contract shall take all reasonable steps to ensure elimination of all forms of discrimination within the meaning and scope of the provisions of the Equality Act 2010 (or any statutory modification or re-enactment thereof) in both its employment practice and in its delivery of the Goods in accordance with an established equal opportunities policy, which policy shall include effective monitoring.

29.2 In complying with its obligations under this Clause, the Supplier shall have due regard to the Client's Equality, Diversity and Inclusion Statement, a copy of which can be found on the Client's website, and the Supplier shall ensure compliance with its obligation under:

29.2.1 The Equality Act 2010; and

29.2.2 The Equality and Human Rights Commission's Guidance for Employers and all amendments, re-enactments, or any subsidiary legislation, enactments, regulations, codes of practice or guidance issued or in force during the Agreement Term.

29.3 The Supplier shall take all reasonable steps to secure the observance of this Clause by servants, employees or agents of the Supplier and all Suppliers and sub-contractors employed in the execution of the Supplier's obligations under this Agreement.

29.4 Failure by the Supplier to comply with its obligations in this Clause may be regarded as a material breach of this Agreement.

### **30. BRIBERY AND CORRUPTION**

30.1 The Client shall be entitled to treat the following as a material breach and immediately terminate this Agreement and recover from the Supplier the amount of any loss resulting from such termination if the Supplier shall:-

30.1.1 have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing, or forbearing to do, or for having done, or refrained from doing any action in relation to the obtaining for execution of this Agreement or any other agreement with the Client; or

30.1.2 for showing, or forbearing to show, favour or disfavour to any person in relation to this Agreement or any other agreement with the Client or if any like acts shall have been done by any person employed by the Supplier, or acting on the Supplier's behalf (whether with or without the knowledge of the Supplier); or

30.1.3 if in relation to any agreement with the Client, the Supplier, or any person employed by the Supplier or acting on the Supplier's behalf shall have committed any offence under the Bribery Act 2010, or any amendment of them; or

30.1.4 shall have given any fee or reward the receipt of which is an offence under the Bribery Act 2010, or any amendment of them.

30.2 Both Parties shall not offer or give or agree to give any representative of the other Party any gift or consideration of any kind as an inducement or reward for doing or refraining from doing any act in relation to this or any other Agreement or for showing favour or disfavour to any person in relation to this Agreement.

30.3 Any dispute relating to:

30.3.1 the interpretation of this Clause; or

30.3.2 the amount or value of any gift, consideration or commission, shall be determined by the Client and the decision shall be final and conclusive.

### **31. PROTECTION OF PERSONAL DATA AND SECURITY OF DATA**

31.1 Unless the context otherwise requires, terms defined in the Data Protection Act 1998 (the DPA) shall have the same meaning when used in this Clause. In the event that the DPA is superseded or replaced by another law, those terms when used in this Clause shall be interpreted and construed by reference to the new law.

31.2 In this Clause, "Data Protection Law" means the DPA and all other applicable laws and regulations from time to time in force relating to data protection, privacy and the processing of personal data, including Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (the Regulation) on and from 25 May 2018, the date upon which the Regulation applies (as set out in Article 99 (Entry into force and application) of the Regulation).

31.3 The Parties hereby agree that, to the extent the Supplier processes personal data on behalf of the Client in the provision of the Goods (Personal Data), the Supplier will act as a data processor for and on behalf of the Client (as data controller). A detailed description of the data processing activities, including the Personal Data concerned, is set out in Schedule 5 of this Agreement.

31.4 The Supplier shall:

31.4.1 only process the Personal Data to the extent necessary in the provision of the Goods and as described in the Schedule 5, and as otherwise instructed by the Client in writing (including as set out in this Agreement);

31.4.2 immediately notify the Client in writing if, in the Supplier's opinion:

(a) the Supplier's compliance with Clause 0 would breach a requirement of applicable law (including Data Protection Law); or

(b) an instruction from the Client breaches a requirement of applicable law (including Data Protection Law),

and the Supplier shall take such steps as are subsequently requested by the Client to comply with Clause 0 in a manner that is in accordance with applicable law

31.4.3 comply with the requirements of Data Protection Law and shall take such steps as are requested by the Client to enable the Client to comply

with its obligations under Data Protection Law, including by providing such assistance to the Client as is contemplated by Article 28(3)(e) and (f) (Processor) of the Regulation on and from the date the Regulation applies (as set out in Article 99 (Entry into force and application)) and entering into such further agreements as are necessary to enable the Client to comply with its obligations under Data Protection Law;

- 31.4.4 implement and maintain all appropriate technical and organisational measures to: (i) ensure the security, integrity and confidentiality of the Personal Data; and (ii) prevent the unauthorised or unlawful processing of the Personal Data (including accidental loss, damage or destruction of the Personal Data) and such measures shall, at a minimum, meet the requirements of Data Protection Law (including the requirements of Article 32 (Security of processing) of the Regulation on and from the date the Regulation applies (as set out in Article 99 (Entry into force and application) of the Regulation);
  - 31.4.5 ensure that access to the Personal Data is strictly limited to: (i) those of its personnel who reasonably require access to the Personal Data in order to provide the Goods; and (ii) in the case of any such access, such part or parts of the Personal Data as is strictly necessary for the performance of the relevant personnel's duties. The Supplier shall take all reasonable steps to ensure the reliability of all of its personnel who have access to the Personal Data. The Supplier shall ensure that all such personnel are bound by a duty of confidence to maintain the confidentiality of the Personal Data;
  - 31.4.6 not disclose or transfer any part of the Personal Data to any person or allow access to it by any person other than as expressly permitted by and in accordance with this Clause; and
  - 31.4.7 not transfer, access or process any Personal Data outside the European Economic Area.
- 31.5 If the Supplier receives any complaint, notice, request (including any subject access request) or communication which relates directly or indirectly to the processing of the Personal Data or to either Party's compliance with Data Protection Law, it shall immediately notify the Client in writing and it shall provide the Client with full co-operation and assistance in relation to the same.
  - 31.6 The Supplier shall immediately notify the Client in writing of any unlawful or unauthorised processing of any Personal Data or if any Personal Data is disclosed or accessed in breach of this Agreement or if any Personal Data is lost or stolen, or is otherwise subject to a security incident and shall provide such assistance in relation to each of the foregoing as is requested by the Client.
  - 31.7 Notwithstanding any other provision in this Agreement, the Supplier shall not sub-contract the processing of Personal Data without the prior written consent of the Client. In the event that the Client consents to the appointment of a subprocessor, the Supplier shall ensure that, prior to any processing of



Personal Data by the subprocessor, the Supplier enters into an agreement with the subprocessor on terms that provide no less protection for Personal Data than those set out in this Clause. The Supplier shall remain fully responsible for the acts, omissions and defaults of each subprocessor as if those were the acts, omissions and defaults of the Supplier. The Client may subsequently withdraw its consent to the engagement of a subprocessor where it has reasonable grounds for doing so (including where the Client has concerns over the ability of the subprocessor to process the Personal Data in the manner contemplated by this Clause) and in such circumstances the Supplier shall cease to use the subprocessor to process Personal Data.

- 31.8 Upon conclusion of the Personal Data processing activities contemplated by this Agreement, the Supplier will (as directed by the Client) securely return or securely destroy the Personal Data and all copies held by or on behalf of the Supplier, and the Client will retain complete discretion over the precise manner in which the Personal Data and the copies are to be returned or destroyed (as the case may be).
- 31.9 The Supplier shall provide the Client with all information requested by the Client to enable the Client to verify the Supplier's (and each subprocessor's) compliance with this Clause. Without prejudice to the foregoing, the Client shall be entitled to inspect, test and audit, or appoint representatives to inspect, test and audit, all facilities, premises, equipment, systems, documents and electronic data relating to the processing of Personal Data by or on behalf of the Supplier. The Supplier shall provide (and shall procure that each subprocessor provides) full cooperation and assistance in relation to each such inspection, test and audit. Without prejudice to the Client's other rights and remedies, in the event that the Client identifies any non-compliance with this Clause as a result of an inspection, test or audit, the Supplier shall:
- 31.9.1 remedy the non-compliance and shall take such steps as the Client reasonably requests for this purpose; and
  - 31.9.2 reimburse the Client for the costs and expenses incurred by the Client in connection with the audit.
- 31.10 This Clause shall remain in full force and effect at all times, notwithstanding the termination or expiry of this Agreement.

## **32. WAIVER**

- 32.1 Any failure by either Party to insist at any time to enforce any of the terms, provisions and undertakings of this Agreement or to require performance by the other Party of any of the terms, provisions and undertakings of this Agreement shall not constitute or be construed as a waiver thereof or a relinquishment of the Parties rights to require the future performance of any such terms, provisions and undertakings and shall not affect the validity of this Agreement or any part thereof or the right of either Party to enforce any obligation in accordance with its terms.

### **33. FORCE MAJEURE**

33.1 Neither Party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure results from Force Majeure. In such circumstances the affected Party shall be entitled to a reasonable extension of time for performing such obligations. If the period of delay or non-performance continues for four (4) weeks the Party not affected may terminate this agreement by giving seven (7) days written notice to the affected Party.

### **34. COMMUNITY FUND**

34.1 The Client recognises the importance of social, environmental and economic well-being across our communities and in individual lives and wishes to use this Agreement as a vehicle to support and improve communities. The Supplier shall, on the expiry of the 12th month, the 24th month and the 36th month period since the commencement of this Agreement, make a contribution of one percent (1%) of the gross turnover during the relevant twelve (12) month period, to the Client, for the Client to use as and when it sees fit in its sole discretion.

34.2 In the event of the Agreement being extended for a further two years, in accordance with Clause 2 of this Agreement, it is a condition that Clause 34 is extended to incorporate further contributions on the expiry of the 48th and 60th months. In all cases, the final year's contribution shall be made to the Client prior to expiry of this Agreement.

### **35. ENTIRE CONTRACT**

35.1 This Agreement constitutes the entire agreement between the Parties concerning its subject matter and it supersedes any previous accord, documents, negotiations, understanding or agreement, written or verbal, implied or express, made, carried out or entered into before the date of this Agreement. Each Party confirms it has not relied upon any representation not recorded in this Agreement or the Contract Documents inducing it to enter into this Agreement.

35.2 No variation of this Agreement shall be valid unless it is in writing, refers specifically to this Agreement and is duly executed by the authorised representatives of both parties on or after the date of this Agreement.

### **36. SEVERANCE**

36.1 If any provision of these Terms is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Terms and the remainder of the provision in question will not be affected.

### **37. GOVERNING LAW AND JURISDICTION**

37.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims)

shall be governed by and construed in accordance with the laws of England and Wales.

- 37.2 The Parties irrevocably agree and acknowledge that the courts of England have exclusive jurisdiction for the purpose of hearing and determining any suit, action or proceeding and/or settle any disputes (including any non-contractual disputes or claims) arising out of or in any way related to this Agreement or its formation or validity and for the purpose of enforcement of any judgment against its property or assets.

**SCHEDULE 1**  
***Specification***

**SCHEDULE 2**  
***Pricing Schedule***

**SCHEDULE 3**  
***Contract Documents***

## SCHEDULE 4

### ***Commercially Sensitive Information***

#### *Commercially Sensitive Contractual Provisions*

<i>Contractual Provision</i>	<i>Time Period</i>	<i>Reason for Confidentiality</i>
Terms and Condition agreed between [ ] & Karbon that would include confidential information such as pricing	“as per Clause 23 (Confidentiality)”	Sensitive Information

#### *Commercially Sensitive Material*

<i>Material</i>	<i>Time Period</i>	<i>Reason for Confidentiality</i>
Terms and Condition agreed between [ ] & Karbon that would include confidential information such as pricing	“as per Clause 23 (Confidentiality)”	Sensitive Information

**SCHEDULE 5**

***Data Sharing Agreement***



## SCHEDULE 6

### *Key Performance Indicators*

Key Performance Indicator (KPI)	Further detail/description	Minimum target level to achieve	Reporting period
Stock List materials availability	Stock List materials available for collection: - by 0730 the next Business Day when the order is placed prior to 1200 - within 24 hours when the order is placed after 1200	100%	Monthly
Non-stock Materials availability	Non-stock Materials, excluding specialist manufactured materials, available for collection within two (2) Business Days, when the order is placed prior to 1200	95%	Monthly
Special Items	Expected delivery date of specialist manufactured materials provided within 24 hours from order	100%	Monthly
Accuracy of material collection	Proportion of all materials collected that are accurate against the relevant order at the time of collection	100%	Monthly
Materials supplied are defect free and of the specified quality	Materials available for collection are not damaged, defective or otherwise unsuitable quality, including none compliance with specification and/or relevant standards (e.g. BS/EN)	100%	Monthly
Invoicing	Invoices are to be submitted on a weekly basis by 12pm on a Monday for all materials supplied in the previous week.	98%	Monthly
Credit notes	Credits are provided to the Client within four (4) working weeks of product return or invoice query	100%	Monthly

IT system availability	The Supplier maintains IT compatibility to the Clients systems, including Capitia, PDA's, etc. between 0500 and 2100 during the working week. Any upgrades that require temporary un availability shall be undertaken Out of Hours and with a minimum of 72 hours written notice to the Client.	100%	Monthly
Shortages/damages of Stock List materials	In the event of Stock List materials being missing, unavailable or damaged at the time of collection, the replacement shall be made immediately	100%	Monthly
Supplier Deliveries	Supplier made delivery within the 2 hour window agreed with Karbon	100%	Monthly
Core and Non-core usage	Supplier to produce report analysing Core and Non-core usage with recommended changes.	100%	Quarterly
Annual Cost saving	Supplier to achieve reduction on material spend as follows:-  End of Year 1 – 2%  End of Year 2 – 2%  End of Year 3 – 1%  End of Year 4 – 1%  End of Year 5 – 1%  Note: End of Year 1 is 12 months after the first date that materials are supplied to the Client	100%	Annually

<p>Value for Money Saving</p>	<p>Supplier to demonstrate VFM as follows:-</p> <p>End of Year 1 – 3%</p> <p>End of Year 2 – 3%</p> <p>End of Year 3 – 2%</p> <p>End of Year 4 – 2%</p> <p>End of Year 5 – 2%</p> <p>Note: End of Year 1 is 12 months after the first date that materials are supplied to the Client</p>	<p>100%</p>	<p>Annually</p>
<p>Innovation / Product Demonstrations</p>	<p>Supplier to provide alternative product demonstrations for top 10% spend Core Products</p>	<p>100%</p>	<p>Quarterly</p>

This Agreement has been duly executed by the Parties on the date stated at the beginning of this Agreement.

Signed by .....

Name .....

Date .....

Duly authorised to sign for and on behalf of the Supplier

Signed by .....

Name .....

Date .....

Duly authorised to sign for and on behalf of Karbon Homes Ltd

Signed by .....

Name .....

Date .....

Duly authorised to sign for and on behalf of Karbon Homes Ltd